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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

PETITION OF AT&T CORP. FOR RECONSIDERATION AND/OR CLARIFICATION

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September 30, 1996

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PETITION OF AT&T CORP. FOR RECONSIDERATION AND/OR CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby requests the Commission to reconsider and/or clarify the provisions of its First Report and Order discussed below.[1]

INTRODUCTION AND SUMMARY

The First Report and Order is a critical and laudable step toward implementation of the "national policy framework" established by Congress in the Telecommunications Act of 1996 ("the Act") to open local exchange monopolies to

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1 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. August 8, 1996)("First Report and Order").

competition. The First Report and Order will not fully achieve this objective, however, unless the Commission closes certain loopholes that incumbent LECs are seeking to exploit or manufacture in four principal areas.

First, the Commission should clarify its pricing guidelines. Most fundamentally, the Commission should clarify the First Report and Order to prevent incumbents from imposing insurmountable entry barriers in the form of myriad, enormous and unjustified "non-recurring" charges upon new entrants. The First Report and Order appropriately focused on the recurring charges incumbents will assess to reflect both one-time activities associated with constructing and developing an efficient network and recurring activities associated with efficiently maintaining and operating that network. To circumvent the Act, incumbents have responded to the First Report and Order by seeking to impose "non-recurring" charges not only for "transactional" activities (associated with, for example, filling an initial loop order), but also for certain "one-time" network development activities (such as providing electronic gateways to operational support systems) that they single out for "special" treatment. The variety and magnitude of the "non-recurring" charges that incumbents have proposed and urged state commissions to adopt as consistent with (and, indeed, required by) the Act and the First Report and Order is astonishing -- from $200 each time an additional loop is requested to more than $100,000 for a collocation cage to literally millions of dollars associated with software development and carrier-to-carrier department "start-up" costs. It is no exaggeration that such charges -- equivalent in some cases to literally years of

TELRIC-based recurring charges -- could prevent the emergence of meaningful competition.

The Commission can check these abuses by first clarifying that non-recurring charges may be assessed only for transactional activities, and not for one-time costs associated with the development of an efficient network which are more appropriately shared among all carriers in proportion to their relative use of network facilities and over the useful lives of those facilities. The Commission should then clarify that incumbents may assess non-recurring charges for the forward-looking costs of transactional activities (and recurring charges for the forward-looking costs of one-time activities) only to the extent that an efficient provider would undertake those activities to provide the requested facilities. The Commission should finally establish a rebuttable presumption and a default proxy ceiling that the forward-looking cost of any non-recurring transactional activity that can be accomplished largely through software or other electronic means is $5, and establish as interim default proxy ceilings for other transactional activities incumbent LECs' currently tariffed retail service order and related charges, less the avoided cost discount used to determine wholesale rates.

The Commission should also limit incumbent LEC opportunities to evade the Commission's pricing guidelines by clarifying that presumptive validity applies to all aspects of regulatorily approved depreciation rates; that incumbents must be consistent in their fill factor and unit price assumptions and calculations; and that they may not restrict access to or use of their cost studies in ways that needlessly increase potential entrants' costs and increase the risk of double recovery. Similarly, the Commission should clarify its default proxy ceiling rules in two respects to prevent incumbents from evading those ceilings. More specifically, the Commission should clarify that costs associated with operational support systems are reflected in the ceiling prices of the network elements which those systems support and that incumbents may not set deaveraged loop or other rates based on their own biased speculations about requesting carrier demand, but must instead include all loops in deaveraging calculations.

Second, the Commission should reconsider its decision to allow incumbent LECs to avoid their resale obligations with respect to "short term" retail "promotions." Both the Act and the First Report and Order make clear that any service sold to end users is a retail service that an incumbent LEC must make available for resale at wholesale rates. Further, any promotional rate exemption would create an enormous loophole, allowing incumbent LECs to evade their resale obligations simply by shifting from one "promotion" to the next in a calculated manner that could destroy any chance for real and immediate retail competition.

Third, the Commission should clarify that incumbent LECs may not impede competition by refusing to permit new entrants to install remote switch modules ("RSMs") in collocated space. Incumbent LECs claim that the switching capabilities of RSMs render them ineligible for collocation as multiplexing or transmission equipment, but, in fact, collocated RSMs will be used by new entrants to perform the same multiplexing and transmission functions otherwise performed (less efficiently) by other equipment. Thus, the arbitrary incumbent LEC ban on RSMs serves only to raise new entrant costs, to create artificial barriers to entry, and, ultimately, to harm consumers.

Fourth, to prevent incumbent LECs from evading their unbundling obligations with respect to significant portions of their loop and transport facilities and capacity, the Commission should reconsider its decision not to address new entrant requests for incumbent LEC "dark fiber." Dark fiber is nothing more than currently unused transmission capacity. By making clear that incumbents must unbundle all loop and transport facilities, the Commission will further the Act's goals and enhance consumer welfare by assuring that a new entrant that identifies consumer demand that can be met profitably with "dark fiber" is not stifled by the incumbent's refusal to provide access to the necessary facilities.

Finally, AT&T continues to believe that Section 251(c) requires the elimination of non-cost-based access charges and the adoption of cost-based rates for all unbundled network elements -- including unbundled switching -- regardless of the types of telecommunications services for which those elements will be used. In addition, even if it were appropriate to consider policy in the face of clear statutory language, there is simply no support for the Commission's assumption that continued tolerance of non-cost-based charges is necessary to fund universal service obligations. Indeed, the record is overwhelmingly to the contrary. This issue was thoroughly ventilated before the Commission previously, however, and no purpose would be served by raising it again here. AT&T will therefore pursue this issue in the court of appeals at the appropriate time.

I. THE COMMISSION SHOULD CLARIFY ITS PRICING GUIDELINES TO DETER WIDESPREAD INCUMBENT LEC EFFORTS TO EVADE THE COMMISSION'S CENTRAL MANDATE THAT RATES SHOULD BE NONDISCRIMINATORY AND REFLECT FORWARD-LOOKING ECONOMIC COSTS.

The First Report and Order properly recognizes that prices "are critical terms and conditions of any interconnection agreement." First Report and Order at ¶ 618. If the prices that potential entrants pay for interconnection, collocation and unbundled network elements reflect their forward-looking costs, market forces will be unleashed, as Congress intended, that "eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition." Id. at ¶ 4. If, on the other hand, incumbent LECs are allowed to act on their anticompetitive incentives "to discourage entry and robust competition by . . . insisting on supracompetitive rates," id. at ¶ 10, consumers will be denied the full competitive benefits promised by the Act.

The First Report and Order goes a long way toward assuring that these competitive benefits are achieved. Although carefully preserving to the states the authority to determine the specific prices for interconnection arrangements, the Commission has made clear both that prices must be based on total element long-run incremental cost ("TELRIC") analyses that "reflect forward-looking economic costs," id. at ¶ 672, and that "embedded" costs, "opportunity" costs and subsidies "must not be included," id. at ¶ 673.

Since the release of the First Report and Order, however, incumbent LECs have engaged in conduct that confirms that the Commission's pricing guidelines need to be clarified to foreclose anticompetitive outcomes. Although state commissions can be relied upon to reject some of these transparent attacks on the procompetitive purposes of the Act -- e.g., unabashed demands that states simply ignore the Commission's Order and Rules[2] -- Commission action will also help to prevent incumbent LECs from claiming adherence to the strict letter of the Commission's Rules while at the same time attempting to exploit silence or ambiguity in ways that would thwart those guidelines and the Act itself.

The most egregious of these practices fall into four general categories: (1) attempts to impose insurmountable entry barriers in the guise of "non-recurring" charges to be borne only by potential entrants; (2) attempts to manipulate cost study inputs in ways that turn the Commission's economic cost mandate on its head; (3) attempts to set prices based on "proprietary" incumbent LEC cost studies that are insulated from meaningful scrutiny; and (4) attempts to game the Commission's default proxy ceilings through, inter alia, improper geographic deaveraging. Obviously, no panacea exists to protect consumers from all of the myriad avenues open to incumbent

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[2] See, e.g., Direct Testimony of Brian Johnson on Behalf of U S West Communications, Inc. at 3-4 (Colo. PUC, filed September 6, 1996) ("The FCC's rules have . . . undermined Congressional intent by making a mockery of the negotiation process"); id. at 14 ("The [state] Commission should reject the FCC's improper reading of the Federal Act"); id. at 13 ("The [state] Commission should also reject the FCC's requirement to offer unbundled services at deaveraged rates"); Response of U S West Communications, Inc. to AT&T's Petition for Arbitration at 17 (Wash. UTC, filed August 19, 1996) ("'cost based' should include the costs that will actually be incurred").

LECs determined to shield their monopolies from competition. Each of the aforementioned categories of abuses, however, is amenable to objective, easily implemented clarifications that will greatly improve the prospects for emerging competition without intruding unnecessarily on state authority.

A. The Commission Should Clarify Its Pricing Guidelines to Prohibit Incumbent LECs from Using Non-Cost-Based "Non-Recurring" Charges to Discriminate, Create Barriers to Entry or Otherwise Impede Competition.

It is clear even from early arbitration proceeding filings, that incumbent LECs view both "one-time" non-recurring activities (e.g., the development of electronic gateways and interfaces) and "transactional" non-recurring activities (e.g., executing a requesting carrier's order for an unbundled loop) as near-limitless opportunities to create insurmountable entry barriers. Regardless how closely incumbent LECs are held by states to the Commission's efficient pricing rules with regard to the recurring charges associated with interconnection, collocation, and network elements, they can and will evade those rules and achieve the same anticompetitive results if they are allowed to increase their potential competitors' costs significantly through non-cost-based "non-recurring" charges.

Although hardly a new problem,[3] improper treatment of non-recurring charges should be of particular concern here. NYNEX, for example, has proposed "link

[3] See, e.g., Expanded Interconnection with Local Telephone Company Facilities, 8 FCC Rcd. 7341, 7360 (1993)("absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to competitive entry");

(footnote continued on following page)

establishment charges" of nearly $150/line and further claims that through August it has incurred nearly $25 million in one-time implementation costs that it seeks to foist on requesting carriers.[4] Pacific Bell has proposed a $182 non-recurring charge for ordering a loop, plus an additional $23 for manual processing because Pacific does not offer electronic interfaces -- a total of more than $200 per loop.[5] Ameritech Illinois has proposed non-recurring charges of more than $40,000 per initial request of 100 sq.ft. of floor space and more than $15,000 per additional request of 100 sq.ft. of floor space for

(footnote continued from previous page)

Expanded Interconnection with Local Telephone Company Facilities, 8 FCC Rcd. 7374, 7438-39 (1993); New York Telephone and New England Telephone and Telegraph Co., 10 FCC Rcd. 5070, 5074 (1995); AT&T Communications, 103 F.C.C.2d 77, 94 (1985)("It is evident that nonrecurring charges can be used as an anticompetitive weapon to restrict resale and discourage competitors").

[4] Initial Post-Hearing Brief of New York Telephone Company on Permanent Rates for Services Offered for Resale and Unbundled Links and Ports, Case 95-C-0657, at 52, 104 (filed August 23, 1996). See also Response of Ameritech Illinois to AT&T's Petition for Arbitration (Pricing Schedule - Illinois) at 2 (ICC, filed August 26, 1996)(proposing a non-recurring unbundled loop service order alone of more than $50 and additional line connection and loop conditioning charges of more than $35 and more than $22 (ISDN) per installation). Response of U S West Communications, Inc. to AT&T's Petition for Arbitration (Exhibit A) at 5 (Wash. UTC, filed August 19, 1996)(proposing a more than $85 non-recurring unbundled loop charge and, if basic testing is included, more than $180); Response of U S West Communications, Inc. to AT&T's Petition for Arbitration (Garrett Y. Fleming, Table 1) at 2 (Colo. UTC, filed September 6, 1996)(proposing more than $90 in non-recurring charges for an untested link); Bell Atlantic - Pennsylvania Inc.'s Comments Including Best and Final Offers at 18 (Penn. PUC, filed August 30, 1996)(proposing a non-recurring charge of more than $36 for service order processing and a more than $35 non-recurring charge for installation).

[5] See Exhibit 5 to Response Brief of Pacific Bell (A-96-08-040).

physical collocation.[6] U S West Communications would charge in excess of $100,000 for a basic "cage" and over $160,000 for an enclosure with hard walls for use in collocation.[7] Unless these and similar abuses are carefully constrained, there can be little doubt that effective competition will be stifled.

The Commission has already ruled that "[n]onrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element." 47 C.F.R. § 51.507(e). Further, both the Act and the Commission's implementing rules make clear that discriminatory charges of any kind are prohibited. See 47 U.S.C. §§ 251(c)(2), (3), (6), and 252(d)(1); 47 C.F.R. § 51.503(a) ("An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory"). By clarifying the First Report and Order and Rules in a few additional straightforward respects, the Commission can nip the worst of the potential non-recurring charge problems in the bud and provide the states with the tools they need effectively to weed out illegitimate entry barriers.

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6 Response of Ameritech Illinois to AT&T's Petition for Arbitration (Exhibit PS-VIII) at 1 (ICC, filed August 26, 1996).

7 See Rebuttal Testimony of Thomas M. Zepp on behalf of AT&T Communications of the Mountain States at 42, Docket 96-A-345-P (Colo. PUC, filed September 17, 1996).

First, the Commission should clarify that "one-time" non-recurring costs that reflect any differences between an efficient single provider network and one designed, as the Act requires, to serve multiple carriers must be treated like all other costs of the "reconstructed network" and recovered in an efficient, competitively neutral, and nondiscriminatory manner.

The costs associated with electronic gateway and other network construction and development activities characterized by incumbent LECs as meriting special treatment should be recovered just like the "one-time" costs of constructing loops, switches, and other network facilities -- i.e., from each requesting carrier only to the extent of its relative use of the network among all carriers, including the incumbent. In this regard, it is important to recognize that the network upon which incumbent LECs must base their prices for interconnection, collocation and network elements -- a "reconstructed local network [that] will employ the most efficient technology," First Report and Order at ¶ 685 -- is a wholesale network designed to provide interconnection, unbundled elements and wholesale services to multiple carriers in a nondiscriminatory fashion. That network may differ in any number of respects from the embedded network an incumbent actually has in place. However, the most fundamental tenet of the Commission's pricing guidelines, and of economic-cost-based pricing generally, is that an incumbent's booked costs of upgrading its network to "most efficient" status may not themselves be considered in determining prices.

Rather, under TELRIC the relevant costs are those of an efficient multiple carrier network "reconstructed" from the ground up, and unit prices are determined by dividing this cost by "the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services." 47 C.F.R. § 51.511. The costs associated with deploying operational support systems with electronic "gateway" capabilities that allow carrier-to-carrier communications and with switches that have the functionality to direct route directory assistance traffic to other carriers (as required by the First Report and Order) are no different in this respect than the costs associated with deploying efficient loops or efficient signaling systems. All are aspects of the efficient reconstructed network, and, to the extent an efficient provider would incur them, all are properly included in determining the costs on which recurring unit charges will be based. There should be no non-recurring charges for any such costs. One-time investments in electronic gateway systems, just like one-time investments in loops or switches, provide long-term consumer benefits and reflect assets and systems that have extended useful lives, and thus, like one-time investments in loops or switches, should be recovered through recurring charges over those extended useful lives. See 47 C.F.R. § 51.507(e) ("[s]tate commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time"). In this way, each carrier is assessed charges in each period in a nondiscriminatory fashion that appropriately reflect its relative use of the network (and its relative share of the total customer base).

Incumbent LECs have taken the position, however, that "one-time" costs associated with, inter alia, developing gateway and direct routing capabilities and starting up carrier-to-carrier service departments -- which incumbents allege are of enormous magnitude -- should be recovered directly and solely from requesting carriers in the form of special non-recurring charges. This constitutes a bare attempt by incumbent LECs to use their monopoly power to favor themselves over potential entrants.[8] In this regard, even if incumbent LECs strictly adhere to forward-looking principles in estimating costs, they can quite easily establish formidable barriers to entry that will suppress competition if they are free to make their competitors pay more of those costs per unit of demand. It is therefore absolutely critical that the Commission clarify -- as it has already done in the number portability context[9] -- that charges for all one-time costs must not discriminate between the incumbent and other carriers. The only recovery method consistent with this nondiscrimination requirement, with the Commission's TELRIC rules, and with the statutory goal of efficient competitive entry is the effective sharing of those costs in a competitively neutral manner on the basis of relative use. More specifically, the Commission should clarify that, in calculating unit charges attributable to a particular requesting carrier, the incumbent LEC must spread the relevant forward-looking costs across all demand -- i.e., across all lines, including the lines still served by the incumbent.

Any other approach would be patently discriminatory. If all of the costs of electronic gateway capabilities that allow requesting carriers access to the same operational support functionalities available to incumbents today were shifted to

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[8] Such ILEC activity also has the effect of shifting the focus of ILEC bottleneck control to non-recurring charges that new entrants cannot avoid -- rather than the elimination of the bottleneck control, as the Act intends.

[9] Telephone Number Portability, 11 FCC Rcd. 8352 (1996).

requesting carriers, for example, those carriers would be at a significant cost disadvantage relative to incumbents and would be paying higher, discriminatory rates for access to those same facilities. The same is true of one-time costs to implement dialing parity, the direct routing of operator services, directory assistance, or 611 repair call traffic, and any other system modifications to facilitate nondiscriminatory interconnection and access. In each case, unless all carriers bear such costs on an equal basis, "new entrants' investment decisions would be distorted," First Report and Order at ¶ 620, in precisely the ways the Commission sought to prevent.

In addition, because many of these one-time system modifications will facilitate both resale-based entry and unbundled network element-based entry, it is equally important that the Commission prevent incumbents from using multiple non-recurring charges to double recover costs, see 47 C.F.R. § 51.507(e), or to distort entrants' method of entry decisions. The Commission should therefore further clarify that unit recurring charges for electronic gateways, for example, should be assessed on the basis of the total number of customers served by each carrier in the relevant period, regardless of the method of entry (or mix of methods) that carrier chooses to employ. Only in this way can the Commission hope to foster markets in which all customers can eventually choose local providers on the basis of relative efficiency.[10]

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10 The competitive neutrality and nondiscrimination principles that require the spreading of such costs across all demand obviously do not apply to costs that incumbent LECs incur to meet the specific requirements of a particular carrier (e.g., service quality or features greater than those provided by the incumbent to its own retail arm), which are properly chargeable to the requesting carrier alone.

It should be noted that even this approach favors incumbents over potential entrants and creates some barriers to entry. The very concept of electronic gateways and interfaces, for example, is to create a "neutral" interface that "translates" electronic communications between differing incumbent and entrant systems, and developing, implementing and testing these translations will obviously require work and expense by both the incumbent and the requesting carrier. But only the incumbent would be allowed to shift a portion of its costs to competitors.

It is true that incumbent LECs will initially bear the largest absolute amount of one-time costs (and of all other costs as well). That is entirely appropriate because they have (and are likely to retain for the foreseeable future) the greatest market share, and thus on a unit basis they will bear no more than any other carrier. So long as each carrier bears such costs on a roughly equal, competitively neutral basis, each will have an equal ability to recover those costs from its customers. And these costs plainly should be shared by all consumers. All consumers -- including those that elect to continue to receive service from incumbents -- will benefit from the new competitive environment through the pressures that market forces will place on all carriers to lower prices, improve quality and service and innovate. And certainly all consumers are better off in an environment in which a consumer can exercise his or her choice to switch carriers without sacrificing quality or convenience or paying a prohibitive rate.

Second, the Commission should clarify that incumbent LECs may charge only for the forward-looking costs of one-time activities and transactional non-recurring activities that an efficient provider would undertake to provide the requested facilities.

Although non-recurring charges are wholly improper with respect to the one-time costs discussed above, properly determined non-recurring charges may be appropriate with respect to transactional costs of filling orders. Whatever form charges take, however, it is fundamental that they may reflect only forward-looking costs. The Commission's First Report and Order and Rules make quite clear that regardless of its booked costs, an incumbent LEC generally must set its interconnection, collocation and network element charges at the forward-looking cost that an efficient provider would incur. See, e.g., First Report and Order at ¶ 685 ("the forward-looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume . . . the most efficient technology"). It is important, however, that the Commission clarify that this principle applies with equal force to charges for both one-time and transactional non-recurring activities and that any such charges must be supported by forward-looking cost studies that assume that the incumbent will use most efficient technology. The Commission should further clarify in this regard that there can be no charge for activities that an incumbent LEC will undertake only because it does not in fact employ the most efficient technology or practices.

Thus, for example, one-time costs to develop electronic gateways and any other facilities necessary to provide requesting carriers with nondiscriminatory electronic access to operational support systems should be estimated assuming that the incumbent LEC already has in place the most efficient computer hardware and software, and any additional costs that the incumbent may actually incur to upgrade outdated equipment or develop software "translations" to outdated software systems must be excluded. Similarly, cost studies supporting transactional non-recurring (or recurring) charges should also assume that the incumbent LEC will utilize efficient technology in the most efficient manner possible. The Commission therefore should clarify that incumbent LECs may not, for example, base service order charges on bloated "time-motion" studies of manual processing operations. Such studies ignore that incumbents are required by the First Report and Order to make available electronic interfaces that will allow requesting carriers to submit orders with little, if any, human intervention by incumbent LEC personnel. And, if loops or other facilities ordered by a requesting carrier require "conditioning" to facilitate interconnection only because the requested facilities do not employ the most efficient technology (or employ technology optimized for broadband service), the incumbent LEC should not be allowed to assess any charge whatever for that conditioning activity. Absent these basic protections, incumbent LECs will have opportunities to get in through the "back door" the very embedded costs associated with inefficient technology that the Commission has expressly excluded from forward-looking TELRIC cost studies.

<u>Third</u>, the Commission should establish a rebuttable presumption to be used in TELRIC cost studies (as well as a default proxy ceiling that states may use on an interim basis) that the forward-looking cost of any non-recurring activity that can be accomplished largely through software or other electronic means is $5, the same non-recurring charge the Commission established for electronic "PIC" changes.[11]

Transactional non-recurring activities will frequently require incumbent LECs to do little more than push a few buttons on a computer to comply with legitimate interconnection requests. No physical rewiring or construction activities whatever will occur in these instances. For example, a requesting carrier may submit a network element or resale-based order for a change "as is" -- <u>i.e.</u>, a transfer of the customer from the incumbent (or another carrier) to the requesting carrier with no change in the services or features provided. Or a requesting carrier may seek to add or drop vertical features or obtain a directory assistance listing for a customer or to have directory assistance or operator services calls from a particular number routed directly to the requesting carrier's facilities. There undoubtedly will be many other such "software" operations for which incumbents will seek to assess non-recurring charges. AT&T and other requesting carriers have been unable to obtain from incumbents the data that would inform

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11 In 1984, the Commission determined that proposed LEC presubscription change charges, which ranged from $5.26 to $58.64, were "unsupported and unreasonable." The Commission therefore concluded that a PIC charge no higher than $5.00 would be reasonable. <u>Investigation of Access and Divestiture Related Tariffs</u>, CC Docket No. 83-1145, Phase I, FCC 84-188, App. B at 13-5 (released April 27, 1984). <u>See also Investigation of Access and Divestiture Related Tariffs</u>, CC Docket No. 83-1145, Memorandum Opinion and Order on Reconsideration, FCC 85-69, at ¶ 8 and App. B "Presubscription" (rel. February 25, 1985).

appropriate TELRIC calculations for each such operation. Even more troubling, the non-recurring charges proposed by incumbent LECs generally have not recognized any cost differences between these "software" activities and more complex operations, such as provisioning an interconnection request that requires the initiation of service to a customer who has just moved to the area.[12]

For these reasons, the Commission should establish as "a starting point" a presumption regarding forward-looking costs -- in the case of non-recurring "software" operations, the same $5 amount that the Commission established in the PIC change context.[13] The California PUC recently adopted a similar interim "supercedure" charge of $4.15 for Pacific Bell for transactions that involve an existing Pacific customer transferring to a reseller,[14] and an incremental cost study prepared by NYNEX in the context of software-only vertical features transactions also supports a lower figure.[15] For

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12 For example, in the resale context, Pacific Bell has proposed a "migration charge" for residential line changes of $49.03. See Testimony of Thomas H. Warner on Behalf of Pacific Bell in Response to Arbitration Petition of AT&T Communications of California, Inc., Exhibit TSW-1 (as revised on September 25, 1996), Docket A-96-08-040.

13 The presumption could be rebutted if an incumbent could demonstrate with a TELRIC cost study that the forward-looking costs of the activities in question exceed $5, or if a prospective competitor showed that TELRIC-based charges are lower than $5.

14 Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, D.96-03-020 at 36.

15 1993 New Hampshire Incremental Cost Study at 188 (produced in compliance with the New Hampshire Public Utilities Commission Order in 20,082, Docket 89-010/85-182)(Order issued March 11, 1991). A copy of this several hundred page document is available upon request.

the same reasons, the Commission should further establish $5 as the interim default proxy ceiling for such activities.

<u>Fourth</u>, because incumbent LECs generally also have not made available to other parties cost data relating to transactional non-recurring activities that may not be primarily software-based, the Commission should further establish interim default proxy ceilings for such charges that states can apply until cost studies consistent with the Commission's TELRIC guidelines are available.

The Commission should, as the California PUC has done,[16] limit service order and related transactional non-recurring charges to currently tariffed <u>retail</u> service order and related charges, less the avoided cost discount used to determine wholesale rates. This is plainly a reasonable interim approach given that the per-transaction costs associated with bulk orders by sophisticated carriers are likely to be much less than the transaction costs associated with single customer retail orders.

B. <u>The Commission Should Limit Incumbent LEC Opportunities to Evade the Commission's Pricing Guidelines through Manipulation of TELRIC Cost Study Inputs.</u>

A number of incumbent LECs have also improperly targeted cost study inputs as candidates for manipulation in ways that evade the Commission's pricing guidelines. The cost of capital, depreciation/asset life, and "fill factor" TELRIC inputs have featured most prominently in these efforts. There is no panacea for these abuses,

16 Order, Docket No. R.95-04-043, "Competition for Local Exchange Service" at 35 (Cal. PUC, April 26, 1995).

but, again, a few simple clarifications will greatly assist the parties and the states in properly applying the Commission's implementing Rules.

First, the Commission should clarify that currently authorized asset lives and depreciation rates, like currently authorized rates of return, are presumptively forward-looking, and that incumbent LECs bear the burden of rebutting those presumptions in the event they believe that other values should be used in TELRIC cost studies.

In the First Report and Order, the Commission found that "the currently authorized rate of return at the federal or state level is a reasonable starting point for TELRIC calculations, and incumbent LECs bear the burden of demonstrating with specificity that the business risks that they face in providing unbundled network elements and interconnection services would justify a different risk-adjusted cost of capital or depreciation rate" (¶ 702). Incumbent LECs nevertheless continue to press in state arbitration proceedings endless variations on the unreasonable cost of capital and asset life themes that (together with incumbents' unique access to their own underlying data) led the Commission to adopt these presumptions. Indeed, despite the Commission's express reference to "depreciation rate[s]," some incumbent LECs apparently feel free to go forward in arbitration proceedings as if no presumptions existed.[17] AT&T is at a loss

17 Ameritech, for example, has recommended that the Illinois commission ignore the Commission's asset lives in favor of extremely truncated asset lives derived from tax rules, financial accounting books and a host of other irrelevant and improper considerations, including "demand analysis" and assumptions that "urban assets" have shorter economic lives than "rural assets." Even more shockingly, Ameritech has proposed to maintain longer asset lives for network equipment used to provide retail local service than for the identical equipment used to provide unbundled network elements. Response of Ameritech Illinois to AT&T's Petition for Arbitration (William C. Palmer) at 8-10 (ICC, filed August 26, 1996).